

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-68 (Sub-No. 4X)

LAKE SUPERIOR & ISHPEMING RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN MARQUETTE COUNTY, MI

Decided: November 23, 2005

By decision and notice of interim trail use or abandonment (NITU) served on January 19, 2005, the Board granted an exemption sought by Lake Superior & Ishpeming Railroad Company (LS&I) under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to permit LS&I to abandon a segment of a line of railroad known as the Republic Subdivision, extending from Humboldt Jct. (milepost 85.6) south approximately 8.9 miles to the end of the line at Republic Mine (milepost 94.5), in Marquette County, MI, subject to environmental and standard employee protective conditions. Also, in response to a request by the Michigan Department of Natural Resources (MI-DNR), the Board imposed a public use condition, and issued a NITU to permit MI-DNR to negotiate with LS&I for acquisition of the line for use as a trail under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), for a 180-day period extending until July 18, 2005.¹ The trail use negotiating period was subsequently extended until November 15, 2005.

On November 14, 2005, MI-DNR filed a request for a further extension of the NITU negotiating period until December 15, 2005. MI-DNR states that the parties are continuing negotiations towards an agreement and that it expects to complete an agreement by December 15, 2005. By letter filed on November 17, 2005, LS&I states that it concurs in the request.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). An extension of the negotiating period will promote the establishment of trail use

¹ The public use condition expired on July 18, 2005.

and rail banking consistent with the Trails Act.² Accordingly, the NITU negotiating period will be extended to December 15, 2005.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request to extend the interim trail use negotiating period is granted.
2. The negotiating period under the NITU is extended to December 15, 2005.
3. This decision is effective on its date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

² See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).